THE HONOURABLE SRI JUSTICE
GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE
S.ANANDA REDDY

WRIT PETITION No. 18895 of 2004

DATED: 08-06-2007

Between:

C.Venkateswar Rao

…Petitioner

and

Chief Judge, City Small Causes Court,
Hyderabad and another

…Respondents

W.P.No. 18895 of 2004

Oral order: (Per GR,J)

The 2nd respondent's promotion as Superintendent, a post under the Andhra Pradesh Judicial Ministerial Service Rules, 2003 (for short '2003 Rules') (issued in G.O.Ms.No.129, Law (L.A & J-Home-Courts-D) dated 12-11-2003) is assailed by the petitioner.

The petitioner and the 2nd respondent earlier worked as Senior Assistants. The petitioner was a Senior Assistant as on the date of filing of the writ petition, while the 2nd respondent was promoted by the impugned order as Superintendent.

The relevant factual matrix is that the 2nd respondent was appointed on promotion as Senior Assistant in 1996. His probation was approved and he is also confirmed as a full member of the service in the said category. In so far as the petitioner is concerned, he was promoted as Senior Assistant in 2003 and was a probationer, his probation was not having been approved by the date of the 2nd respondent's promotion as Superintendent, by the proceedings of the 1st respondent, dated 31-8-2004.

The Andhra Pradesh Judicial Ministerial Service Rules, 1964 were revised and substituted by the Andhra Pradesh Judicial Ministerial Service Rules, 2003. As the promotion in

question was in the year 2004 it is axiomatic that the 2003 Rules apply. Under these Rules, the post of Superintendent is enumerated as Category II. Note (2) to Rule 5 of these Rules specifies that the posts in Categories I to III are selection posts, promotion to which is to be made on the grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. Under the 2003 Rules, for holding the post of a Senior Assistant on promotion, a person must, *inter alia*, pass the Criminal Judicial Test. The 2nd respondent did not pass the said test either on the date of his promotion and appointment as Senior Assistant in the year 1996 or on the date of his promotion as Superintendent by the impugned proceedings. The requirement of passing the Criminal Judicial Test as the necessary qualification for holding the post of a Senior Assistant on promotion was introduced by the 2003 Rules. It was not a requirement under the 1964 Rules.

In order to assuage the consequent grievance of existing employees consequent on the issuance of the Revised Rules, 2003, Rule 38 of these Rules incorporates transitory provisions. These require the relevant test now prescribed to be passed within the prescribed period of probation and further enjoins that this concession shall be in force for a period of two years from the date of issue of these Rules.

Extending the benefit of Rule 38 of the 2003 Rules, the 2nd respondent was promoted as Superintendent. The petitioner assails his promotion on the singular ground that the 2nd respondent was not qualified for promotion as Superintendent as he does not possess a pass in the Criminal Judicial Test, which is the qualification requisite for holding the post of a Superintendent. It is required to be noticed that the petitioner has

also since been promoted as the Superintendent.

In the counter-affidavit, the respondents contend that the promotion accorded to the 2nd respondent is valid and proper as power inheres in the respondents to grant promotion to the 2nd respondent as Superintendent; that the 2nd respondent has also been called upon to pass the the Criminal Judicial Test within a prescribed period. It is stated by the learned counsel for the 2nd respondent that the 2nd respondent has since been acquired a pass in the Criminal Judicial Test and within the time granted to him for acquiring such qualification.

In view of the provisions of Rule 38 of the 2003 Rules, the position is clear that the non-possession of a pass in the Criminal Judicial Test by the 2nd respondent is not a bar to being considered for promotion as Superintendent, subject to his acquiring a qualification within the time granted. Even otherwise the post of a Superintendent under the 2003 Rules is a selection post. Admittedly, the 2nd respondent is senior to the petitioner in the category of Senior Assistant. The petitioner was a mere probationer as on the date of the impugned promotion of the 2nd respondent. He has also since been promoted as the Superintendent. On the factual matrix this court discerns no infirmity in the impugned order promoting the 2nd respondent as Superintendent. In case the petitioner has any subsisting grievance with regard to *inter se* seniority as is urged at the hearing of the writ petition, since that is not in issue in this writ petition, the same need not be resolved herein. The petitioner is always at liberty to make a representation for accord of seniority over the 2nd respondent. If made, the same be considered on merits.

On the aforesaid analysis, there are no merits. The writ petition is accordingly dismissed. No order as to costs.

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GODA RAGHURAM, J

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S.ANANDA REDDY, J

08-06-2007
GRR